

*Ruppert*



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Patten Co., Inc.  
**File:** B-237021  
**Date:** December 22, 1989

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### DIGEST

Protest that agency improperly solicited competitive bids for life rafts based on data allegedly proprietary to protester, and that procurement should have been from qualified products list, is dismissed as untimely where same allegations initially were raised in agency-level protest, and subsequent protest to General Accounting Office was not filed within 10 working days after agency proceeded to accept bids, which was initial adverse agency action.

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### DECISION

Patten Co., Inc., protests the award of a contract to Vinyl Technology, Inc., under invitation for bids (IFB) No. DTCG23-89-B-10036, issued by the United States Coast Guard for 1,200 one-person inflatable life rafts with canopy, plus options. Bids were opened on September 1 and, of five bids received, Vinyl's was low at \$473,748.50 and Patten's was fourth low at \$873,726. Vinyl was determined to be a responsible bidder and was awarded a contract on September 19; Patten's protest was received in our Office September 20. Patten contends that the Coast Guard has wrongfully used its proprietary data, drawings and specifications for the raft canopy in this IFB, and that the canopied rafts should have been purchased from Patten off the qualified products list (QPL) for life rafts; Patten states that Vinyl is not presently on the QPL and has never furnished inflatable life rafts to the government.

We dismiss the protest as untimely.

Under our Bid Protest Regulations, protests based on alleged improprieties apparent on the face of the solicitation must be filed with the contracting agency or our Office prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1989). Where a protest is filed initially with the agency, any subsequent protest to our Office must be filed no later than 10 working days

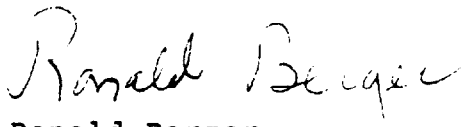
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after initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3). The term "adverse agency action" includes the agency's proceeding with the acceptance of offers in the face of a protest alleging solicitation improprieties. Carlisle Tire and Rubber Co., B-235413, May 12, 1989, 89-1 CPD ¶ 457.

Patten was aware of its protest grounds before bid opening, advising the Coast Guard in letters dated August 10 and August 23, 1989, that it had developed the drawings for the life raft canopy and that it believed the procurement should be based on the QPL. The Coast Guard does not believe these letters constituted a proper agency-level protest, and asserts that Patten's protest here thus should be dismissed for failure to challenge alleged solicitation improprieties prior to bid opening. We need not resolve this question, however, since Patten's protest was not timely filed in any case. In this regard, if Patten's letters are deemed to be a protest to the agency, the agency's decision to proceed with bid opening as scheduled on September 1 constituted initial adverse agency action. Since Patten's protest was not filed in our Office until September 20, more than 10 working days later, it was untimely. Carlisle Tire and Rubber Co., B-235413, supra.

In any case, the protest is without merit. The canopy assembly here was developed by Patten for the National Aeronautics and Space Administration (NASA), which contracted for the drawings. Although the drawings of the canopy assembly were supplied to the Coast Guard by Patten, those drawings reportedly were produced by NASA and they do not indicate any claims to proprietary rights. Further, Patten has not shown that developing the drawing involved significant time and expense in preparation. Under these circumstances, there would be no basis for concluding that Patten's proprietary rights have been violated. See Porta Power Pak, Inc., B-196218, Apr. 29, 1980, 80-1 CPD ¶ 305.

The protest is dismissed.

  
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